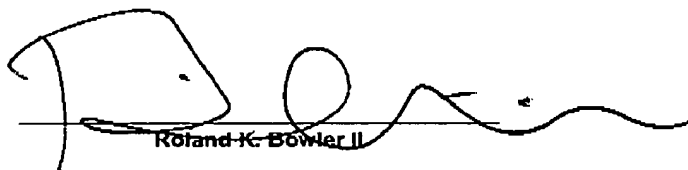


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I hereby certify that this correspondence is being transmitted via facsimile to 571-273-8300 on 2 FEBRUARY 2006 addressed to: ASSISTANT COMMISSIONER FOR PATENTS, ALEXANDRIA, VA 22313.

  
Roland K. Bowler II

In re Applicant:	)	
	)	Examiner R. Perez Gutierrez
HAYEK ET AL.	)	
	)	Art Unit 2683
Appl. No.:	)	
09/998,489	)	
	)	
Confirm No.	)	
6375	)	
	)	
Filed:	)	Atty. Docket No. CS11336
30 November 2001	)	
Title:		"RF Receivers And Methods"

**TRANSMITTAL UNDER 37 CFR 1.181**

Assistant Commissioner for Patents  
Alexandria, Virginia 22313

Sir:

HAYEK ET AL.  
"RF Receivers And Methods"  
Atty. Docket No. CS11336

Appl. No. 09/998,489  
Examiner R. Perez Gutierrez  
Art Unit 2683

The following is enclosed:

- [ X ] Pctition under 37 CFR 1.181 (7 page);
- [ X ] Fee Calculation Sheet (DUPLICATE).

Respectfully submitted,



ROLAND K. BOWLER II 2 FEBRUARY 2006  
REG. NO. 33,477

MOTOROLA, INC.  
INTELLECTUAL PROPERTY DEPT. (RKB)  
600 NORTH U.S. HIGHWAY 45, AN475  
LIBERTYVILLE, ILLINOIS 60048

TELEPHONE NO. (847) 523-3978  
FACSIMILE NO. (847) 523-2350

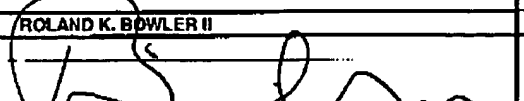
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<b>3. APPLICATION SIZE FEE</b> If the specification and drawings exceed 100 sheets of paper, the application size fee is \$250 (\$125 for small entity) For each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(c).				Total Sheets: <u>100</u> Extra Sheets: <u>50</u> Number of each additional 50 or fraction thereof: <u>1</u> Fee (\$): <u>250</u> Fee Paid (\$): <u>250</u>																																																																																																																																																						
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<b>SUBMITTED BY</b> <u>ROLAND K. BOWLER II</u>				<b>Registration No.</b> <u>33,477</u> <b>Telephone</b> <u>847-523-3978</u>																																																																																																																																																						
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<b>3. APPLICATION SIZE FEE</b> If the specification and drawings exceed 100 sheets of paper, the application size fee is \$250 (\$125 for small entity) For each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(a). Total Sheets: <input type="text"/> Extra Sheets: <input type="text"/> Number of each additional 50 or fraction thereof: <input type="text"/> Fee (\$): <input type="text"/> Fee Paid (\$): <input type="text"/> - 100 = <input type="text"/> / 50 = <input type="text"/> (round up to a whole number) x 250 = <input type="text"/>																																																																																																																																																										
<b>SUBMITTED BY</b> <b>ROLAND K. BOWLER II</b> Name (Print/Type): <input type="text"/> Signature: 				<b>5. OTHER FEE(S) (specify)</b> Non-English Specification, \$130 fee (no small entity discount) Fee Paid (\$): <input type="text"/>																																																																																																																																																						
Registration No. <b>33,477</b> Telephone <b>847-523-3978</b> Date <b>2 February 2006</b>																																																																																																																																																										

**RECEIVED  
CENTRAL FAX CENTER****FEB 02 2006****PATENT****IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

In re application of )  
HAYEK ET AL. ) Examiner R. Perez Gutierrez  
Appl. No.: 09/998,489 ) Art Unit 2683  
Confrim. No. 6375 )  
Filed: 30 November 2001 ) Atty. Docket No. CS11336  
Title: "RF Receivers And Methods"

**PETITION UNDER 37 C.F.R. § 181**

Assistant Commissioner for Patents  
Alexandria, Virginia 22313

Sir:

**Jurisdiction**

The Commissioner has jurisdiction to consider the issues discussed below under 37 CFR 1.181.

**Issue**

At issue is whether Applicants' response filed on 7 February 2005 under 37 CFR 1.111 should be entered and prosecution re-opened, and more particularly whether the Examiner's Answer of 10 January 2005 stated a new grounds for rejection under 37 CFR 41.39 where the Examiner first cited a new prior art reference, to support Official Notice allegedly asserted previously.

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The more narrow issue is whether the Examiner took Official Notice prior to the Answering Applicants' Brief.

### Overview of Procedural History

On 18 August 2004, Applicants' filed a Notice of Appeal and an Appeal Brief seeking redress for the Examiner's final rejection of claims in the Office Action mailed on 18 May 2004.

On 7 February 2005, Applicants filed a response under 37 CFR 1.111 requesting that prosecution be re-opened in light of the new grounds of rejection stated in the Examiner's Answer mailed on 10 January 2005.

On 27 July 2005, the Board of Appeals remanded the application to the Examiner for consideration of Applicant's amendment filed on 7 February 2005.

On 13 January 2006, the Examiner mailed an Advisory action indicating a refusal to enter Applicants' 37 CFR 1.111 response filed on 7 January 2005.

In subsequent telephone inquiries, made by the undersigned representative, the Examiner's Supervisor, Marsha Banks-Harold, refused to discuss the propriety of the Examiner's asserted official notice and indicated that prosecution would not be re-opened.

Applicants' now petition the Commissioner for relief.

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**Summary of Rejection in Examiner's Answer Asserted By Applicants  
to Raise New Grounds of Rejection of Claim 11, 13, 14, 18 & 24**

In the Answer of 10 January 2005, Claims 11, 13, 14, 18 and 24 were rejected under 35 USC 103(a) as being unpatentable over U.S. Publication No. 2001/0039182 (Atkinson) in view of Mouly et al.

Mouly was first cited by the Examiner in the Answer to Applicants' Brief. The Examiner asserted, in the Answer, on page 3, section (10), as follows:

*... Note: In response to Appellant's challenge to the Official Notice rejection of Claims 11 and 22, the added reference of Mouly et al. is proceeded as evidence to support the rejection.  
[emphasis original]*

**Official Notice; Patent Office Procedure**

The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support a conclusion of common knowledge. The Examiner must also present Applicant with the explicit basis on which the examiner regards the matter as subject to official notice so that Applicants may challenge the assertion in the next reply after the Office action in which the common knowledge statement was made. MPEP 2144.03(B), Procedure for Relying on Common Knowledge Or Taking Official Notice.

**Discussion Of Prosecution History Supporting  
Applicants' Assertion That Official Notice Was Not Taken**

**Discussion of 1<sup>st</sup> Office Action**

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In the first non-final Office action mailed on 13 March 2003, Claim 11 was rejected under 35 USC 102(e) as being anticipated by U.S. Publication No. 2001/0039182 (Atkinson). Claim 13, 14 and 18 were rejected under 35 USC 103(a) as being unpatentable over Atkinson. In this regard, the Examiner admitted no deficiency of Atkinson relative to Claims 13, 14 and 18, though the Examiner concluded it would have been obvious to modify the teachings of Atkinson to meet certain limitations of the Claims. The Examiner did not discuss the rejection of Claim 24.

The Examiner thus failed to take Official Notice of any well known fact or common knowledge as required by MPEP 2144.03 or in a manner that would reasonably apprise Applicants' that the Examiner had taken Official Notice in the first non-final Office action of 13 March 2003.

#### Discussion of 2<sup>nd</sup> Office Action

In the second non-final Office action mailed on 25 September 2003, Claims 11, 13, 14, 18 and 24 were rejected under 35 USC 103(a) as being unpatentable over Atkinson. Regarding Claim 11, the Examiner stated, at page 4 of the Office action mailed on 25 September 2003, that

[a]lthough Atkinson does not specifically disclose that the frequency F3 is also outside a bandwidth of received signal harmonics, it would have been obvious ... to use a frequency F3 that is outside the bandwidth of received signal harmonics in order to further minimize any effect in VCO 38 from a potential coupling of the received signal [citations omitted].

Regarding Claims 13, 14, 18 and 24, without admitted any further deficiency of Atkinson, the Examiner stated at page 4 of the Office action mailed on 25 September 2003, that



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... it would have been obvious ... to modify the teachings of Atkinson to specifically select a frequency divide ratio greater or equal to one that would have maintained the local oscillator frequency outside the bandwidth of harmonics or fundamental frequency of the received signal in order to prevent leakage of the local oscillator frequency.

The Examiner has thus failed to take Official Notice of any well known fact or common knowledge as required by MPEP 2144.03 or in a manner that would reasonably apprise Applicants' that Official Notice had been relied upon in the second Office action mailed on 25 September 2003.

#### Discussion of 3<sup>rd</sup> Office Action

In the third Office action, made final, mailed on 18 May 2004, Claims 11, 13, 14, 18 and 24 were rejected under 35 USC 103(a) as being unpatentable over Atkinson. Regarding Claim 11, the Examiner repeated the rejected stated in the Office action mailed on 25 September 2003.

Regarding Claims 13, 14, 18 and 24, without admitted any further deficiency of Atkinson, the Examiner stated, at page 4 of the Office action mailed on 18 May 2004, that

...although Atkinson does not specifically discloses [sic] that the frequency divide ratio is greater or equal to one, Atkinson does disclose that the frequency divide ratio can be selected such that the received signal is mixed at a local oscillator frequency outside a bandwidth of a fundamental frequency of the received signal (e.g., outside a channel bandwidth) or local oscillator frequency derived from a VCO frequency that is outside a bandwidth of the nth harmonic of the received signal [citations omitted].

Therefore, it would have been obvious ... to modify the teachings of Atkinson to specifically select a frequency divide ratio greater or equal to one that would have maintained the local oscillator frequency outside the bandwidth of harmonics or fundamental frequency of the received signal in order to prevent leakage of the local oscillator frequency.

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The Examiner did not discuss the rejection of Claim 24 in the Office action of 18 May 2004.

The Examiner has thus failed to take Official Notice of any well known fact or common knowledge as required by MPEP 2144.03 or in a manner that would reasonably apprise Applicants' that Official Notice had been relied upon in the first non-final Office action mailed on 18 May 2004.

### Analysis & Conclusion

The Examiner's rejections of Claims 11, 13, 14, 18 and 24 for obviousness under 35 USC 103(a) are based on mere conclusions. The official record in the instant application is devoid of any evidence or indication that the Examiner has taken Official Notice of any well known fact or common knowledge prior to the Examiner's Answer. The Examiner has failed to provide specific factual findings predicated on sound technical and scientific reasoning to support the conclusion of common knowledge and failed to present Applicant with an explicit basis on which the Examiner regards the matter as subject to official notice so that the Applicants may challenge the assertion in the next reply after the Office action in which the common knowledge statement was made, as required under MPEP 2144.03(B).

The Examiner's refusal to enter Applicants' amendment filed on 7 February 2005 and to re-open prosecution where Applicants' were first apprised of the Examiner's reliance on Official Notice upon receiving the Examiner's Answer is also a denial of due process.

The Examiner's citation of the new reference (Mouly) in support of the rejections of Claims 11, 13, 14, 18 and 24 in the Answer of 10 January

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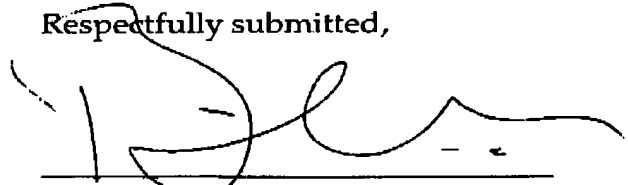
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2005 therefore states new grounds for rejection. Applicants' amendment under 37 CFR 1.111 filed on 7 February 2005 must be entered and prosecution must be re-opened as requested by Applicants under 37 CFR 41.39.

### Prayer for Relief

Kindly remand the instant application to the Examiner with instructions to enter the amendment filed on 7 February 2005 and to re-open prosecution.

Respectfully submitted,



ROLAND K. BOWLER II  
REG. NO. 33,477

2 FEB. 2006

MOTOROLA, INC.  
INTELLECTUAL PROPERTY DEPT. (RKB)  
600 NORTH U.S. HIGHWAY 45, AN475  
LIBERTYVILLE, ILLINOIS 60048

TELEPHONE NO. (847) 523-3978  
FACSIMILE NO. (847) 523-2350